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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/746,901	11/18/1996	ISAAC K. ELLIOTT	MCIC-105/00U	8149

25537            7590            11/27/2001  
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EXAMINER	
NGUYEN, STEVEN H D	
ART UNIT	PAPER NUMBER

2664  
DATE MAILED: 11/27/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

T.R

<b>Office Action Summary</b>	Application No.	Applicant(s)
	08/746,901	ELLIOTT, ISAAC K.
Examiner	Art Unit	
Steven HD Nguyen	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 August 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15) Notice of References Cited (PTO-892)                            18) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20.                    20) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (RFC 1789) in view of Kenner (USP 6003030) and Gawlick (USP 6175870).

As claims 31-38, Yang discloses a plurality of gateways and call router which connects the switched communication network and the packet network having a logic which transmits a query message which includes a call type of service to the directory service to obtain a plurality of gateways that match the predefined call service criteria and an identifier of the call to an associated IP address and routing the call to the selected gateways (Page 1-5, Yang discloses a plurality of gateways and a call router connected between the telephone network and computer network to allow a caller to communicate with the other caller in which the call router used to

route a call from source to destination and the gateways used to perform the protocol converter such as convert analog voice to data voice to transmit in the Internet etc . . . When the first server which generates a query message to a directory server to obtain at least one of plurality of gateways which have an IP address corresponding to a telephone number of a destination). However, Yang does not disclose transmitting a message to each of a plurality of gateways to obtain a trace route, ranks the plurality of gateways according to the result of the trace route message, selecting a gateway with a highest ranking from the plurality of gateways for attempting to route a call over the selected gateway. In the same field of endeavor, Kenner disclose a communication system which queries a database to obtain a list of plurality servers "gateways" and sends a trace route message to each of plurality of gateways and prioritizing the plurality of gateways according to the test results and selecting a highest priority "shortest hop" to transmit a message (See col 18, lines 60 to col 19, lines 33, col 9, lines 55 to col 10, lines 10; col 11, lines 20-27). Gawlick discloses a communication system for routing a call on the highest ranked path "minimum hop path if hop equal 1, it means no router between the access point and gateway, col. 6, lines 44-60"; if failing, the call will be routed via a next highest ranked path in the set of paths (See Fig. 5, Ref 515, 530, 550 and 527).

Since, Yang suggests that a delay of Internet must be taken into consideration. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply the teaching of Kenner and Gawlick such as determining the delay between the access point and the plurality of servers and alternated routing into Yang's internet telephony system. The motivation would have been to maintain the quality service of audio packets.

***Response to Arguments***

3. The office action, which is mailed on 3/27/2001, the examiner fails to argue if Yang's publication is enabled or not. Therefore, this office action is make non-final office action.
4. Applicant's arguments filed 8/27/2001 have been fully considered but they are not persuasive.

Page 3-4 of the response, the applicant states that Yang is not enable because it's an Internet memo and its language. In reply, the applicant must provide which parts of Yang's apparatus is not enable. After reading the Yang's publication, one of ordinary skill in the would have been known how to establish an internet telephony by obtaining the gateway and directory servers which has a database for matching a telephone number with a plurality of IP address which are nearest to the telephone number is submitted by user. Furthermore, the examiner disagrees with the applicant because Yang's publication disclosed an apparatus having a minimum required as disclosed at INETPhone servers paragraph and hardware. Therefore, Yang's publication is enabled.

Pages 5-7 of the response, the applicant states that Yang does not disclose a query message for obtaining a plurality of gateways. In reply, Yang discloses an Internet server for query the directory servers for obtaining the remote servers that matching with the telephone number, which is submitted by the user as, showed in the paragraph 2. Kenner discloses a communication system for querying a database "directory server" for obtaining the delivery site and performing testing to range the delivery sites according hop count by using a trace route function which is well known in the art as showed in the paragraph 2. Garlic discloses a method of routing a call based on minimum hop path as showed in the paragraph 2.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Yang suggests that an internet communication system must have short delay such as minimum hop path in order to have a quality signal. Therefore, it would have been obvious to one of ordinary skill in the art to apply the teaching of Kenner and Garlic into Yang's apparatus.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (703) 305-4366. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Steven HD Nguyen  
Art Unit 2664  
November 13, 2001